

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Chicago Public Schools)	File No. SLD-263338
Chicago, Illinois)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
Changes to the Board of Directors of the)	CC Docket No. 97-21
National Exchange Carrier Association)	

ORDER

Adopted: September 18, 2002

Released: September 19, 2002

By the Wireline Competition Bureau:

I. INTRODUCTION

1. In this Order, the Wireline Competition Bureau (Bureau) grants the request of the Chicago Public Schools, Chicago, Illinois, for a waiver of the September 30, 2002 deadline for installation of non-recurring services for schools and libraries receiving universal service funding for Funding Year 2001 of the program.¹ Specifically, we find that Chicago Public Schools is entitled to a waiver of section 54.507(d) of the Commission's rules, which requires recipients under the schools and libraries universal service support mechanism to implement contracts or agreements with service providers for non-recurring services by September 30 following the close of the funding year.² We grant Chicago Public Schools a one-year extension of the September 30, 2002 deadline, to September 30, 2003. This waiver will provide Chicago Public Schools with sufficient time to install their Funding Year 2001 non-recurring services, and thereby fully utilize their universal service discounts.

II. BACKGROUND

2. Pursuant to section 254 of the Act, eligible schools, libraries, and consortia that

¹ Electronic mail from Tracey Beaver, Schools and Libraries Division, Universal Service Administrative Company, to Mark Seifert, Federal Communications Commission, dated June 10, 2002, forwarding Letter from Arne Duncan, Chicago Public Schools, to Schools and Libraries Division, Universal Service Administrative Company, dated March 28, 2002 (Request for Waiver). See 47 C.F.R. § 1.3 (allowing the Commission to waive Commission rules on its own motion); see also 47 C.F.R. § 0.91 (delegating to the Wireline Competition Bureau the functions of the Commission except as reserved to the Commission under 47 C.F.R. § 0.291).

² See 47 C.F.R. § 54.507(d).

include eligible schools and libraries, may apply for discounted eligible telecommunications, Internet access, and internal connections services.³ Applicants must apply for discounts on an annual basis, in each funding year of the program.⁴ The Commission's rules also require schools and libraries to use services for which discounts have been committed by the Administrator within the funding year for which the discounts were sought.⁵

3. In the *Universal Service Order*, the Commission established a calendar funding year (January 1-December 31) for schools and libraries receiving universal service support.⁶ The Commission revised its rules in the *Fifth Order on Reconsideration*, and changed the funding year for schools and libraries to a fiscal year (July 1-June 30).⁷ In order to ease transition to the new fiscal year method, the Commission extended the first year by six months so the Funding Year 1998 funding period ran from January 1, 1998-June 30, 1999.⁸ In the first Funding Year of the universal service program for schools and libraries, however, the Commission extended the deadline for schools and libraries to use their discounts on Funding Year 1998 non-recurring services from June 30, 1999 (the end of the funding period) to September 30, 1999.⁹ This extension recognized delays in the implementation of the schools and libraries universal service support mechanism in the first year of the program, and provided applicants with additional flexibility in light of that delay.

4. Consistent with this order, the Common Carrier Bureau subsequently extended the deadline to install non-recurring services in Funding Years 1999 and 2000.¹⁰ The extended deadline was intended to give schools and libraries more time to implement non-recurring services, and make greater use of their universal service discounts. Furthermore, the Bureau concluded that extending the deadline until September 30 would allow schools to implement

³ 47 U.S.C. § 254. See also 47 C.F.R. §§ 54.502, 54.503.

⁴ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9062, para. 544 (1997) (*Universal Service Order*), as corrected by *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Errata, FCC 97-157 (rel. June 4, 1997), affirmed in part, *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999) (affirming *Universal Service Order* in part and reversing and remanding on unrelated grounds), cert. denied, *Celpage, Inc. v. FCC*, 120 S. Ct. 2212 (May 30, 2000), cert. denied, *AT&T Corp. v. Cincinnati Bell Tel. Co.*, 120 S. Ct. 2237 (June 5, 2000), cert. dismissed, *GTE Service Corp. v. FCC*, 121 S. Ct. 423 (November 2, 2000).

⁵ *Id.* See also *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Fifth Order on Reconsideration and Fourth Report and Order, 13 FCC Rcd 14915, 14921, para. 9 (1998) (*Fifth Order on Reconsideration*); 47 C.F.R. § 54.507(d), (e).

⁶ *Universal Service Order*, 12 FCC Rcd at 9057, para. 535, and 9234, para. 710.

⁷ *Fifth Order on Reconsideration*, 13 FCC Rcd at 14916, para. 1, and 14920, para. 8.

⁸ *Id.* In prior years, this funding period was referred to as Funding Year 4. Funding periods are now described by the year in which the funding period starts. Thus the funding period which begins on July 1, 2001 and ends on June 30, 2002, previously known as Funding Year 4, is now called Funding Year 2001. The funding period which begins on July 1, 2002 and ends on June 30, 2003 is now known as Funding Year 2002, and so on.

⁹ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Tenth Order on Reconsideration, 14 FCC Rcd 5983, 5991-94, paras. 17-23 (1999) (*Tenth Order on Reconsideration*).

¹⁰ See *Federal-State Joint Board on Universal Service*, Order, CC Docket No. 96-45, 15 FCC Rcd 8064 (Com. Car. Bur. 2000).

non-recurring services over the summer months when schools were in recess.¹¹

5. In 2001, the Commission recognized as a general matter that it is reasonable for schools and libraries to have additional time to implement non-recurring services, given the fact that many of these services must be installed during the summer months when classes are not in session.¹² The Commission therefore modified section 54.507(d) of its rules to allow schools and libraries to implement non-recurring services by September 30, following the close of the funding year.¹³ The Commission found that non-recurring services often involve the installation of equipment or wiring, for which schools and libraries incur a one-time cost.¹⁴ As a result, many non-recurring services need to be performed while students are not in school or over the summer months, and the Commission thus modified its rules to permanently minimize disruptions for classrooms and students.¹⁵

6. Pursuant to section 54.507(d) of the Commission's rules, applicants will qualify for an extension of the implementation deadline for non-recurring services if they satisfy one of the following criteria: (1) applicants whose funding commitment decision letters are issued by the Administrator on or after March 1 of the funding year for which discounts are authorized; (2) applicants who receive service provider change authorizations or service substitution authorizations from the Administrator on or after March 1 of the funding year for which discounts are authorized; (3) applicants whose service providers are unable to complete implementation for reasons beyond the service provider's control; or (4) applicants whose service providers are unwilling to complete installation because funding disbursements are delayed while the Administrator investigates their application for program compliance.¹⁶ The Commission also noted that if an applicant satisfies one of the four criteria, then March 1 will be the key date for calculating the extended deadline.¹⁷ If one of the conditions is satisfied before March 1 (of any year), the applicant will have until September 30 of the instant year to complete implementation. If one of the conditions is satisfied after March 1, the applicant will have until September 30 of the following year to complete implementation.¹⁸

7. Chicago Public Schools filed its Request for Waiver with the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (USAC) on April 2, 2002. Since SLD has no authority to waive Commission rules, SLD forwarded Chicago Public Schools' request to the Bureau for consideration. In its Request for Waiver, Chicago Public Schools asserts that given the time it takes to complete the wiring projects, the issuance of the

¹¹ *Id.*, 15 FCC Rcd at 8067, paras. 5-6.

¹² *Federal-State Joint Board on Universal Service*, Report and Order, CC Docket No. 96-45, FCC 01-195, 16 FCC Rcd 13510 (2001) (*Non-Recurring Services Order*).

¹³ *Id.* Under the revised rule, schools and libraries receiving funding commitments for non-recurring services in Funding Year 2001 have until September 30, 2002 to implement these services.

¹⁴ *Id.*, 16 FCC Rcd at 13511, para. 8.

¹⁵ *Id.*

¹⁶ 47 C.F.R. § 54.507(d)(1) – (4).

¹⁷ *Non-Recurring Services Order*, 16 FCC Rcd at 13512, para. 13.

¹⁸ *Id.*

Funding Commitment Decision Letter by SLD more than seven months after the start of Funding Year 2001 has made it impossible for Ameritech to complete the required work on 116 schools by September 30, 2002.¹⁹ Chicago Public Schools states that its Funding Commitment Decision Letter (FCDL) was issued on February 8, 2002.²⁰ Chicago Public Schools recognizes that its FCDL was received before March 1, 2002, but nonetheless asks that it receive an approximate one-year extension of the non-recurring services deadline, to August 7, 2003, to allow its vendor sufficient time to complete the installation of the services.²¹

II. DISCUSSION

8. At the outset, we note that Chicago Public Schools' request for an extension does not satisfy any of the four criteria for an automatic one-year extension under section 54.507(d)(1) – (4) of the Commission's rules.²² Chicago Public Schools received its FCDL prior to March 1, 2002, and therefore pursuant to the Commission's rules, its vendor must complete installation of the Funding Year 2001 non-recurring services prior to September 30, 2002.²³ Chicago Public Schools also does not satisfy the criterion at section 54.507(d)(3) of the Commission's rules, which allows for an automatic extension if the applicant's service provider cannot complete the installation before the scheduled deadline due to circumstances beyond its control.²⁴ Ronco has stated that it does have the capability to meet the September 30, 2002 deadline, albeit with increased hardship.²⁵ Because Chicago Public Schools' situation does not fit within any of the four criteria under section 54.507(d) of our rules, we must treat Chicago Public Schools' request as a request for a waiver of section 54.507(d) of our rules.

9. The Commission may waive any provision of its rules on its own motion and for good cause shown.²⁶ A rule may be waived where the particular facts make strict compliance inconsistent with the public interest.²⁷ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis.²⁸ In sum, waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.²⁹

10. We conclude that special circumstances exist to justify a waiver of section

¹⁹ Request for Waiver at 2.

²⁰ *Id.* at 1.

²¹ *Id.*

²² 47 C.F.R. § 54.507(d)(1) – (4).

²³ *See* 47 C.F.R. § 54.507(d)(1).

²⁴ 47 C.F.R. § 54.507(d)(3).

²⁵ *See* Ronco Letter.

²⁶ 47 C.F.R. § 1.3.

²⁷ *Northeast Cellular*, 897 F.2d at 1166.

²⁸ *WAIT Radio*, 418 F.2d at 1157.

²⁹ *Northeast Cellular*, 897 F.2d at 1166.

54.507(d) of the Commission's rules as requested by Chicago Public Schools. Specifically, we find that the potential hardships that would be incurred by Chicago Public Schools, including financial hardships, if its vendor were forced to compress its installation schedule into an expedited schedule justifies a waiver in this instance. In this situation, requiring strict adherence to section 54.507(d) of the Commission's rules would impose an impractical and unreasonable hardship on Chicago Public Schools.

11. We conclude, based on the record before us, that it would be consistent with the public interest and the intent of section 254 of the Communications Act to grant Chicago Public Schools' request and thus extend the deadline for installation of Funding Year 2001 non-recurring services for Chicago Public Schools by one year, to September 30, 2003. This is consistent with the Commission's finding in the *Non-Recurring Services Order* that external circumstances such as delayed funding decisions can create situations where deadlines are both impractical and unreasonable, as well as the Commission's and the Bureau's long-standing policy of ensuring that applicants for non-recurring services are not penalized for delays that are not within their control.³⁰

III. ORDERING CLAUSES

12. Accordingly, IT IS ORDERED, pursuant to sections 1-4, and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 0.91, 0.291, 1.3, and 54.722(a) of the Commission's rules, 47 U.S.C. §§ 0.91, 0.291, 1.3, and 54.722(a) that the request for waiver of section 54.507(d) of the Commission's rules, 47 C.F.R. § 54.507(d), filed by the Chicago Public Schools on June 10, 2002, IS GRANTED to the extent provided herein.

³⁰ *Non-Recurring Services Order*, 16 FCC Rcd at 13512, para. 11. See also paragraphs 3-5 and note 11, *supra*. See also *Request for Waiver of the September 30, 2000 Deadline for Implementation of Non-Recurring Services by Baldwin County Board of Education, Federal-State Joint Board on Universal Service*, Order, CC Docket No. 96-45, DA No. 01-747, 16 FCC Rcd 7053 (Com. Car. Bur. 2001).

13. IT IS FURTHER ORDERED that the Funding Year 2001 deadline for installation of non-recurring services IS EXTENDED for the Chicago Public Schools, Chicago, Illinois, to September 30, 2003.

FEDERAL COMMUNICATIONS COMMISSION

Carol E. Matthey
Deputy Chief, Wireline Competition Bureau